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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

FABIOLA FRAGOSO, individually;

Plaintiff,

vs.

WAL-MART, INC., a foreign corporation; DOE
EMPLOYEES; DOE MANAGERS; DOES I-XX,
inclusive; and ROE CORPORATIONS I-XX,
inclusive,

Defendants.

Case No.: 2:22-cv-01507-CDS-EJY

**STIPULATION AND ORDER TO
EXTEND DISCOVERY PLAN AND
SCHEDULING ORDER
(FIFTH REQUEST)**

Plaintiff FABIOLA FRAGOSO, by and through her counsel of record, JOSEPH J. WIRTH, ESQ., and ASH MARIE BLACKBURN, ESQ., of BLACKBURN WIRTH, LLP, and Defendant WAL-MART, INC., by and through its counsel of record, KURT R. BONDS, ESQ, and TANYA M. FRASER, ESQ. of HALL & EVANS, LLC, hereby submit the instant Stipulation and Order to Extend the Discovery Plan and Scheduling Order (Fifth Request) pursuant to LR IA 6-1 and LR 26-3 as follows:

I.

PROCEDURAL HISTORY

This lawsuit involves allegations that Plaintiff FABIOLA FRAGOSO (hereinafter “FRAGOSO”) suffered serious injuries related to a slip and fall on Defendant’s premises. On June 30, 2022, Plaintiff filed her Complaint against Defendant WAL-MART, INC. with the Eighth Judicial District Court for Clark County, Nevada. On September 31, 2022, Defendant

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WAL-MART, INC. filed its Answer denying Plaintiffs' allegations and denying all liability for the injuries. On September 8, 2022, Plaintiff filed her Request for Exemption from Arbitration in which she outlined her claimed injuries and alleged damages. On September 12, 2022, Defendant WAL-MART, INC. filed its Notice of Removal and removed the matter to this Court based on diversity jurisdiction. On September 15, 2022, Defendant WAL-MART, INC. filed its Statement Regarding Removal. The parties participated in the Fed. R. Civ. P. 26(f) conference on October 12, 2022, and filed their proposed Joint Discovery Plan and Scheduling Order which was entered by this Court on October 27, 2022.

II.

DISCOVERY COMPLETED

To date, Plaintiff has completed the following discovery:

- Plaintiff's FRCP 26 Initial Disclosure, served October 26, 2022;
- Plaintiff's First Set of Interrogatories to Defendant WAL-MART, INC., served December 12, 2022;
- Plaintiff's First Set of Requests for Production to Defendant WAL-MART, INC., served December 12, 2022;
- Plaintiff's First Supplemental FRCP 26 Disclosure, served March 3, 2023;
- Plaintiff's Second Supplemental FRCP 26 Disclosure, served March 13, 2023;
- Deposition of Dana James on March 21, 2023;
- Plaintiff's Third Supplemental FRCP 26 Disclosure, served April 25, 2023;
- Deposition of David Rosas on April 27, 2023;
- Plaintiff's Second Set of Requests for Production to Defendant WAL-MART, INC., served June 5, 2023;
- Plaintiff's Fourth Supplemental FRCP 26 Disclosure, served June 28, 2023;
- Plaintiff's Fifth Supplemental FRCP 26 Disclosure, served September 26, 2023;
- Plaintiff's Sixth Supplemental FRCP 26 Disclosure, served October 26, 2023;
- Plaintiff's Seventh Supplemental FRCP 26 Disclosure, served March 7, 2024.

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To date, Defendant WAL-MART, INC. has completed the following discovery:

- Defendant's FRCP 26 Initial Disclosure, served October 28, 2022;
- Deposition of Fabiola Fragoso on April 26, 2023;
- Defendant's Answers to Plaintiff's First Set of Interrogatories, served February 17, 2023;
- Defendant's Responses to Plaintiff's First Set of Requests for Production, served on February 17, 2023;
- Defendant's First Supplemental Responses to Plaintiff's First Set of Requests for Production, served on March 3, 2023;
- Defendant's First Supplemental FRCP 26 Disclosure, served March 3, 2023;
- Defendant's Second Supplemental FRCP 26 Disclosure, served April 12, 2023;
- Deposition of James Burris on June 28, 2023;
- Defendant's Responses to Plaintiff's Second Set of Requests for Production, served July 14, 2023;
- Defendant's Third Supplemental FRCP 26 Disclosure, served July 14, 2023.
- Defendant's First Supplemental Responses to Plaintiff's First Set of Interrogatories, served February 6, 2024.

III.

DISCOVERY REMAINING TO BE COMPLETED

- Deposition of Defendant WAL-MART, INC.'s corporate representative, currently being rescheduled;
- Depositions of Plaintiff's treating providers;
- Initial expert designations;
- Rebuttal expert designations;
- Depositions of Initial and Rebuttal Experts;
- Inspection of the subject floor and surrounding area, scheduled for March 11, 2024;
- Inspection of drainage systems;

- Deposition of witness Dark Sword, currently scheduled for April 1, 2024;
- Deposition of witness Imani Henry, currently for April 2, 2024;
- Deposition of witness Joshua Oberhausen, currently scheduled for April 1, 2024;
- Additional written discovery.

This is a complex premise liability claim. The parties have diligently worked to move the case forward, including the exchange of initial disclosures, fact witness depositions, party depositions and the securing of independent copies of Plaintiff's medical records. A motion for protective order was filed by Defendant and a Motion to Compel was filed by Plaintiff. Both Motions were heard before Magistrate Judge Youchah on December 4, 2023. Following the hearing, the parties diligently worked to schedule the inspection of the gardening department. Unfortunately, due to the weather, there were no plants available for testing until mid-March. As such, the parties noticed the inspection as soon as practically possible. The inspection is now scheduled to go forward on March 11, 2024. Unfortunately, this does not allow adequate time for the parties experts to draft and finalize their corresponding reports.

Additionally, the depositions of witnesses Dark Sword and Joshua Oberhausen were previously scheduled to take place on March 20, 2024 and March 21, 2024. Plaintiff was recently informed the witnesses are unavailable on those dates. As such, the parties have rescheduled both depositions for April 1, 2024. Witness Imani Henry's deposition was also noticed for March 21, 2024. However, Plaintiff was recently informed that Defendant was unable to contact Mr. Henry so Plaintiff will be required to subpoena him to appear for deposition. With the current discovery deadlines rapidly approaching and a fair amount of discovery yet to be completed, the parties have agreed to a thirty (30) day discovery extension to complete the remaining discovery as well as any necessary motion practice. This extension will allow the parties to complete all outstanding discovery and move this case closer to trial.

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IV.

PROPOSED DISCOVERY SCHEDULE AND TRIAL DATE

	Current Date	Proposed Date
Discovery Cut-Off:	06/26/2024	07/26/2024
Motions to Amend Pleadings/ Add Parties:	04/02/2024	05/02/2024
Initial Expert Disclosures:	04/02/2024	05/02/2024
Rebuttal Expert Disclosures:	05/28/2024	06/27/2024
Dispositive Motions:	07/26/2024	08/26/2024
Joint Pre-Trial Order:	09/02/2024	10/02/2024

This is the fifth request for an extension of time in this matter and no trial date will be impacted by the extension as no such trial date has been set. The parties submit that the reasons set forth above constitute good cause for the requested extension.

DATED this 7th day of March 2024.

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/s/ Ash Marie Blackburn
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Dated this 7th day of March 2024.

HALL & EVANS, LLC

/s/ Kurt Bonds
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IT IS SO ORDERED.


 U.S. MAGISTRATE JUDGE

Dated: March 8, 2024

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